> shall be entitled to a trial by jury, which shall conform as near as may be to the practice in criminal cases. Upon conviction, the accused shall not be fined more than $1,000 or imprisoned for more than six months."

and § 207(b) says:

> "The remedies provided in this title shall be the exclusive means of enforcing the rights based on this title, but nothing in this title shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this title, including any Statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right."

The Congress could hardly have made plainer its intention not to bring into play the ninety-four year old ten year felony statute.[4]

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[4] Senator Humphrey, the leading spokesman for the Civil Rights Act, explained subsection 207(b) in a speech delivered on the floor of the Senate on May 1, 1964, as follows:

> "The clause which reads that 'the remedies provided in this Title shall be the exclusive means of enforcing the rights hereby created' is designed to make clear that a violation of sections 201 and 202 cannot result in criminal prosecution of the violator or in a judgment of money damages against him. This language is necessary because otherwise it could be contended that a violation of these provisions would result in criminal liability under 18 U.S.C. 241 or 242 * * *. Thus, the first clause in section [207(b)] simply expresses the intention of Congress that the rights created by Title II may be enforced only as provided in Title II. This would mean, for example, that a proprietor in the first instance, legitimately but erroneously believes his establishment is not covered by section 201 or section 202 need not fear a jail sentence or a damage action if his judgment as to the coverage of Title II is wrong."

Indeed, in the recent case of *Atlanta Motel* v. *United States*, —— U.S. —— (Dec. 14, 1964), the Supreme Court, after an analysis of Title II of the Act, concludes that under it "remedies are limited to civil actions for preventive relief."

In the *Williams* case, decided in 1950, the Supreme Court pointed out that these §§ 241 and 242 had in the various codifications been considered by Congress subsequent to their original enactment, not once but four times, without any change in substance, notwithstanding the Court's consistent course of decisions, dating from *Cruikshank* in 1876, indicating that § 241 was in practice interpreted to protect only rights arising from the existence and powers of the Federal Government. Now fourteen years later it can perhaps even more significantly be observed that the Congress, even with the *Williams* decisions before it and in the light of the careful consideration given to the entire subject of civil rights incident to the passage of the Civil Rights Act of 1964, has chosen not to broaden the long standing interpretations of this section. Both of the *Williams* decisions were careful not to question the power of the Congress to enforce by appropriate criminal sanctions every right guaranteed by the Due Process Clause of the Fourteenth Amendment. The question of the power of the Congress under the Constitution to legislate in this field is not here in question. This important matter of "the wise adjustment between State responsibility and national control of essentially local affairs" (341 U.S. 70, 73) is the responsibility of the Congress. The courts are not to invade this field beyond the manifest Congressional intent.

The fact that the *Williams* cases were decided by divided courts, 2 to 1 in the court of appeals, and 5 to 4 in the Supreme Court, and the fact that one of the Supreme Court Justices concurred in the majority

opinion upon grounds other than those expressed in the opinion written by Mr. Justice Frankfurter for the majority, does not militate against the soundness of the views expressed in the majority and controlling opinions. Each of these decisions, though lacking unanimity is a binding precedent upon this court under the familiar doctrine of *stare decisis.*

Moreover, it follows from the *Screws* decision by the Supreme Court and from the *Williams* decision by the court of appeals that any broader construction of § 241 than to cover only federal citizenship rights as such would render it void for indefiniteness.[5]

The Court of Appeals in *Williams* said:

> "The failure (of § 241 to create a crime if such broader interpretation be given it) lies in the application of the statute to the provision of the Fourteenth Amendment, 'Nor shall any State deprive any person of life, liberty, or property, without due process of law,' because of the extreme vagueness of the quoted clause. Reference is made to the discussions of a similar question touching Sec. 20 in *Screws* v. *United States,* 325 U.S. 91, 65 S. Ct. 1031, 89 L. Ed. 1495, 162 A.L.R. 1330, wherein by a closely divided court that statute was upheld because it provided that 'wilful' violations only were to be crimes, and that meant that the accused, exercising the power of the State, not only deprived another of a federally secured right, but knew it was such, and wilfully flouted the Constitution and laws of the United States. This indictment does not charge these defendants with 'wilfulness', nor does the statute mention it, and the judge refused to give the jury on request charges that 'wilfulness' was a necessary element of the case.
>
> "2. The Congress and the federal court are themselves faced here with the provision of the

[5] The Supreme Court did not reach the question of vagueness in the *Williams* case.

> Fifth Amendment that 'No person shall * * * be deprived of life, liberty, or property, without due process of law', and it is found right in the midst of provisions in the Fifth and Sixth Amendments about federal prosecutions for crime. It is well understood that 'due process' applies not only to court procedure, but also to legislation, especially in criminal matters. There are no common law federal crimes, but all are created by statute, though common law words in the statute may take their intended meaning from the common law. Not only must the accusation inform the accused for what he is to be tried, but due process requires that the statute must inform the citizen in advance by a reasonably ascertainable standard what the crime shall be. A judge may not establish the standard, save by reasonable interpretation, after the deed is done, for that is in substance to give the statute life *ex post facto,* which the Constitution forbids also. All this we understood to be admitted by all the justices in the opinions in the Screws case. The word 'wilful' in Sec. 20 was held by the majority to mean that the accused knew that the federal right existed and intentionally and purposely violated it, and his knowledge and wilfulness made him a criminal." At 647.

The court of appeals held further that while the word "conspire" has some connotation of criminality it does not have the force of the word "wilfully" appearing in § 242, and that it was solely because of the word "wilfully" so appearing that the Supreme Court, in *Screws,* held § 242 valid. The Supreme Court, in *Screws,* recognized that "if the Act falls by reason of vagueness so far as due process of law is concerned, there would seem to be a similar lack of specificity when the privileges and immunities clause * * * and the equal protection clause * * * of the Fourteenth

Amendment are involved." *Screws* v. *United States*, 325 U.S. 91, 100, 89 L. ed 1495, 1502.[6]

Certainly all law abiding, liberty loving citizens would feel that if the defendants did what the indictment charges they should be tried, and if, after a fair trial, convicted, that they should be appropriately punished; but the question is by what authority should they be tried, and if, after a fair trial, convicted appropriately punished. The enforcement of general criminal laws is a local matter with authority and responsibility resting squarely and solely upon local city, county, and state governmental authorities. It is common knowledge that two of the defendants, Sims and Myers, have already been prosecuted in the Superior Court of Madison County, Georgia for the murder of Lemuel A. Penn and by a jury found not guilty. As important and desirable as it is that the defendants be tried where not already tried, and if, after a fair trial, convicted that they be appropriately punished, it is equally important that this court not usurp jurisdiction where it has none.

Fortunately, under the Criminal Appeals Act, 18 U.S.C.A. § 3731, the Government has a speedy remedy for a review of this ruling by the Supreme Court, and if it be there adjudicated that this indictment is valid a trial can yet be had.

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[6] This element of vagueness proves fatal to State statutes. For instance, Georgia's insurrection statute, *Herndon* v. *Lowry*, 301 U.S. 242, 81 L. ed 1066; Georgia's statute against unlawful assemblies for the purpose of disturbing the peace, *Wright* v. *Georgia*, 373 U.S. 284, 10 L. ed 2d 349. It has had the same effect upon South Carolina's common law crime of breach of the peace, *Edwards* v. *South Carolina*, 372, U.S. 229, 9 L. ed 2d 697.

Let an order be entered sustaining the defendants' motions to dismiss.

This 29th day of December, 1964.

/s/ W. A. BOOTLE,
United States District Judge.

APPENDIX B

In the District Court of the United States for the Middle District of Georgia, Athens Division

Criminal No. 2232

UNITED STATES OF AMERICA

vs.

HERBERT GUEST, JAMES S. LACKEY, CECIL WILLIAM MYERS, DENVER PHILLIPS, JOSEPH HOWARD SIMS, GEORGE HAMPTON TURNER

FINAL ORDER

Pursuant to the memorandum opinion of this Court dated December 29, 1964, it is

CONSIDERED, ORDERED AND ADJUDGED that the indictment in the above-styled case be and the same is hereby dismissed.

So ORDERED, this the 8th day of January, 1965.

/s/ W. A. BOOTLE,
United States District Judge.

Presented by:

/s/ Floyd M. Buford,
FLOYD M. BUFORD,
United States Attorney.

U.S. GOVERNMENT PRINTING OFFICE: 1969